

WEBINAR WEDNESDAYS



Wednesday, May 26, 2021

TITLE IX & THE INVESTIGATION OF SEXUAL ASSAULT

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ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
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***Title IX and the
Investigation of Sexual Assault***

Arizona Prosecuting Attorneys' Advisory Council
May 26, 2021

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Police, not colleges, should investigate sex assaults on campus

No, We Can't Just Leave College Sexual Assault to the Police
By ALEXANDRA BRODSKY and ELIZABETH DEUTSCH | December 03, 2014

Who Should Investigate Sexual Assault: Cops or Colleges?

Colleges struggle to investigate sexual assaults. But why are they involved at all?

Why Schools-Not Law Enforcement-Should Investigate Campus Rapes

Colleges Ill-Equipped To Investigate, Adjudicate Sexual Assaults

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Today we will cover

- Introduction to Title IX
- What Title IX investigations look like
- What Title IX adjudications look like
- Potential intersections with criminal process
- Dealing with those intersections

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Title IX of the 1972 Education Amendments

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

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What are we talking about when we say
Title IX?

- Statute
- Federal court cases interpreting civil rights statutes
- Federal guidance documents
- Individual resolution agreements between federal government and institutions
- **Regulations**

p.s.— don't forget other state and federal laws may apply

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History of Title IX and campus sexual assault


- 2011 Dear Colleague Letter
- Survivor activism
- Obama administration enforcement
- Growing activism and litigation around due process
- 2017 Trump administration rescission
- 2020 Title IX regulations

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Title IX Basics: Roles

- Title IX Coordinator
- Investigator
- Facilitator of informal resolution
- Party advisor
- Decisionmaker
- Appeals officer
- **TRAINING!!**




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Title IX Basics: School must respond

- Actual knowledge
- Sexual harassment
- Education program or activity
- Person in the United States




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Title IX Basics: School must formally investigate

Formal complaint filed by complainant that alleges Title IX sexual harassment and requests an investigation



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Title IX Sexual Harassment is

Conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- 3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

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Characteristics of Title IX investigation

- Equal rights and equitable treatment
- Formal complaint
- Notice to parties
- Right to an advisor
- Interviews of parties
- Interviews of witnesses
- Collection of documentary and other evidence
- Party review of all evidence directly related to allegations and opportunity to provide feedback

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Limitations on scope of Title IX evidence collection




- No search warrants
- No subpoenas
- Can't compel anybody to do anything

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Evidence sharing

- School must share all evidence collected that is directly related to the allegations
- 10 days for review and response
- What can the parties and advisors do with the evidence that is shared with them?
- Investigator actions following review and response period



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And more sharing



- School must then summarize evidence that is relevant to allegations in an investigation report
- 10 days for review and response

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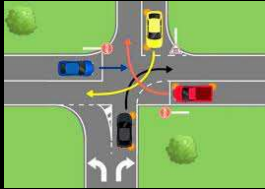
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Characteristics of Title IX adjudication

- Presumption of non-responsibility
- Live hearing
- Cross examination by advisors
- Rule about prior statements/submitting to cross examination
- Standard of evidence
- Mandatory bases for appeal

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Intersections with the criminal process

- Party experiences
- Witness experiences (including SANEs and cops)
- Confusion and irritation experienced by lots of people
- Timing
- Conflicting statements
- Issues of information-sharing
- Decisions made based on different bodies of evidence

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Dealing with those intersections

- Get very familiar with the school's Title IX policy and procedures
- Ask for a pause if you need it
- Get to know the school's Title IX staff
- Appreciate the impacts of parallel investigations
- Provide expert training to school Title IX staff
- Set expectations for information sharing
- Development and leadership of a C-SART

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Keep in mind as you investigate and prosecute a campus sexual assault

- Growing list/extent of knowledge about possible perpetrators
- Possible benefits from patience and coordination of timing
- Resource for explaining puzzling aspects of other system
- Partners can sometimes provide missing information

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Questions?

- For more information:

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